

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 1996-318-C

IN RE: Establishment of Interim Local Exchange           )  
Fund to Address Revenue Impact on                        )  
Incumbent Local Exchange Carriers Electing            )  
To Reduce Toll Switched Access Rates                    )  
\_\_\_\_\_)

**RESPONSE TO PETITION FOR RECONSIDERATION OR REHEARING**

The South Carolina Telephone Coalition (“SCTC”) respectfully submits this Response to the Petition for Reconsideration or Rehearing of Order No. 2011-543, filed by the South Carolina Cable Television Association (“SCCTA”) on September 30, 2011, in the above-referenced docket. Counsel for SCTC was served with a copy of the Petition by mail.

In its Petition, SCCTA asserts that the Public Service Commission of South Carolina (“Commission”) erred in a number of respects. SCTC responds to each ground raised by SCCTA as follows.

- 1. The Commission’s decision will not result in South Carolina maintaining a system of supporting universal service that conflicts with state and federal law, as SCCTA argues.**

SCCTA argues that the “Commission’s refusal to transition the ILF into the USF means that South Carolina will maintain a system of supporting universal service that conflicts with state and federal statutory provisions.”<sup>1</sup> SCCTA bases its argument on its erroneous assumption that ILF is a universal service support mechanism. This assumption ignores the clear intent of

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<sup>1</sup> Petition at 3.

the General Assembly in creating two funds for two separate purposes, funded by different sets of contributors.

The State USF was created to “continu[e] South Carolina’s commitment to universally available basic local exchange telephone service at affordable rates and to assist with the alignment of prices and/or cost recovery with costs.”<sup>2</sup> The General Assembly directed the Commission, consistent with federal law governing the establishment of state universal service mechanisms,<sup>3</sup> to “require all telecommunications companies providing telecommunications services within South Carolina to contribute to the USF as determined by the commission.”<sup>4</sup>

The ILF, on the other hand, was created by the General Assembly to allow companies with high intrastate toll switched access rates to lower those rates to levels comparable to those of the largest LEC operating in the State.<sup>5</sup> This would provide access rate comparability and reduce the opportunity for access rate arbitrage, among other things. The lowering of access rates was directed to be funded in two ways: First, the LECs were permitted to adjust other rates, not to exceed statewide average rates.<sup>6</sup> Second, the LECs could draw from the ILF any amounts necessary to recover revenues lost from the reduction of access rates that were not recovered through the rate adjustments.<sup>7</sup> The General Assembly directed that the ILF established by the Commission would initially be funded by those entities receiving an access or interconnection rate reduction from LEC’s ... in proportion to the amount of the rate reduction.”<sup>8</sup>

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<sup>2</sup> S.C. Code Ann. § 58-9-280(E).

<sup>3</sup> See 47 U.S.C. § 254(f) (“A State may adopt regulations not inconsistent with the [FCC’s] rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State.”)

<sup>4</sup> S.C. Code Ann. § 58-9-280(E)(2).

<sup>5</sup> S.C. Code Ann. § 58-9-280(L).

<sup>6</sup> S.C. Code Ann. § 58-9-280(L).

<sup>7</sup> *Id.*

<sup>8</sup> S.C. Code Ann. § 58-9-280(M).

The Commission's decision not to transition ILF into the State USF at this time is fully consistent with its statutory authority and with federal and state law. The General Assembly created the ILF and State USF for different purposes, with different sets of contributors. While the General Assembly contemplated that ILF could be transitioned into the State USF, this transition was clearly contingent on the funding for State USF being finalized and adequate to support the obligations of the ILF. The Commission properly found it is not appropriate to transition ILF into the State USF at this time.

**2. The Commission's finding that funding for the State USF is not finalized is consistent with applicable law and is supported by the record.**

SCCTA argues that the Commission's finding that funding for the USF is not finalized because of the potential changes in the federal USF is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.<sup>9</sup> To the contrary, the Commission's finding is an appropriate interpretation of the law and fully supported by the record.

In fact, SCCTA's argument completely ignores half of the relevant statute and half of the Commission's finding. The relevant statute requires not only that the State USF be finalized, but also that it be adequate to support the obligations of the ILF.<sup>10</sup> Accordingly, the Commission found that the State USF "is neither finalized nor adequate to support the obligations of the Interim LEC Fund at this time."<sup>11</sup>

Furthermore, SCCTA's argument that changes in federal USF would not impact the State USF is erroneous, and completely misses the point. SCCTA argues that the State USF formula

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<sup>9</sup> Petition at 4.

<sup>10</sup> S.C. Code Ann. § 58-9-280(M).

<sup>11</sup> Order No. 2011-543 at 2.

takes into account changes in federal funding,<sup>12</sup> and that changes in federal USF funding would not impact the money paid under the State USF unless the incumbent LECs choose not to file requests for revisions in their subsidy amounts.<sup>13</sup> These arguments relate to changes in the *amount* of federal USF as it is currently structured. As the Commission stated in its Order, “there are forces at work in Washington, DC that may change the *entire character* of the Universal Service Fund at the Federal level, and this could force a change in character of the USF at the State level.”<sup>14</sup> As is evident from public documents, including the Federal Communications Commission’s (“FCC’s”) Notice of Proposed Rulemaking,<sup>15</sup> the FCC is poised to consider *comprehensive structural reform* to the federal USF and Intercarrier Compensation mechanisms,<sup>16</sup> which could significantly impact the State USF. As the Commission noted, that change is scheduled to be considered by the FCC by the end of this year.<sup>17</sup> The Commission clearly acted reasonably and prudently in finding that consolidating ILF and State USF is inappropriate at this time.<sup>18</sup>

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<sup>12</sup> See Petition at 5 (“If federal funding changes later this year, as suggested by Order No. 2011-543, the Commission’s USF formula will automatically take that change into account ....”)

<sup>13</sup> See Petition at 6.

<sup>14</sup> Order No. 2011-543 at 2, *citing* Tr. at 42-47 and 51 (emphasis added).

<sup>15</sup> *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. February 9, 2011).

<sup>16</sup> See, e.g., *id.* at ¶ 1 (“Today, ... we propose to fundamentally modernize the [FCC’s] Universal Service Fund ... and intercarrier compensation ... system.”)

<sup>17</sup> Order No. 2011-543 at 2. In fact, a proposed FCC order is being circulated and is on the FCC’s agenda for consideration at its October 27, 2011 meeting. See News Release dated October 6, 2011, “FCC Announces Tentative Agenda for October Open Meeting.”

<sup>18</sup> In fact, Time Warner Cable Information Services (South Carolina), LLC, the CLEC affiliate of SCCTA member Time Warner Cable, has presented testimony in the recent past apparently acknowledging that funding for the State USF is not finalized. In arguing that rural LECs need not be concerned about competition from CLECs like Time Warner, a Time Warner witness testified that if rural LECs lose lower-cost customers to competition, they can simply petition the Commission to receive additional support from the State USF. See Direct Testimony of Warren R. Fischer, C.P.A., in Docket Nos. 2008-325-C through 2008-329-C, at 13.

**3. The Commission did not exceed its statutory authority in noting that consolidating the ILF into State USF would increase the State USF surcharge.**

SCCTA argues the Commission exceeded its statutory authority in “refusing to consolidate the ILF into the USF because of the ‘tax increase’ aspects of the change.”<sup>19</sup> In light of its finding that the State USF is not finalized or adequate to support the obligations of the ILF because of the impending changes to federal USF and intercarrier compensation mechanisms, the Commission’s statements regarding the magnitude of the increase in State USF that would result from transitioning the ILF were not necessary to its ruling. Nonetheless, the Commission’s concern for end-user customers is well within its statutory authority as a *Public Service* Commission. The Commission properly considered the fact that transitioning the ILF into the State USF would change the base of contributors, from the statutory ILF contributors (*i.e.*, carriers that received an access or interconnection rate reduction as a result of LECs lowering their intrastate toll switched access charges) to the end-user telecommunications service customers who fund the State USF.<sup>20</sup> The impact on the contributor base is an appropriate consideration in determining whether the State USF is adequate to support the obligations of the ILF. The Commission acted within, and did not exceed, its statutory authority in this regard.

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<sup>19</sup> Petition at 7.

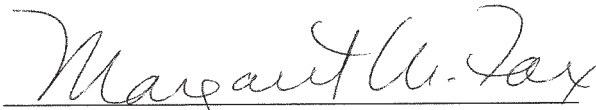
<sup>20</sup> See S.C. Code Ann 58-9-280(M) (“The Interim LEC Fund shall initially be funded by those entities receiving and access or interconnection rate reduction from LEC’s ... in proportion to the amount of the rate reduction.”); S.C. Code Ann. 58-9-280(E)(2) (“The Commission shall require all telecommunications companies providing telecommunications services within South Carolina to contribute to the USF as determined by the commission”); Order No. 2001-419 in Docket No. 1997-239-C at pp. 39-40, ¶ 19 (authorizing carriers to pass State USF contributions through to end user customers).

**4. The Commission's Order is sufficiently detailed to determine whether the law has been properly applied to its findings and conclusion.**

The Commission's Order is more than sufficiently detailed to support its findings and conclusion. The question is a simple one: Is funding for the State USF finalized and adequate to support the obligations of the Interim LEC Fund? The Commission found that it is not, for the reasons set forth in its Order. Those reasons are clearly supported by the record and by the law.

WHEREFORE, for the reasons stated above, the South Carolina Telephone Coalition respectfully requests that the Commission deny the Petition for Reconsideration or Rehearing of Order No. 2011-543 filed by SCCTA, and grant such other relief as is just and proper.

Respectfully Submitted,



M. John Bowen, Jr.  
Margaret M. Fox  
McNAIR LAW FIRM, P.A.  
Post Office Box 11390  
Columbia, South Carolina 29211  
Telephone: (803) 799-9800  
Facsimile: (803) 753-3278  
Email: [jbowen@mcnair.net](mailto:jbowen@mcnair.net); [pfox@mcnair.net](mailto:pfox@mcnair.net)

Attorneys for the South Carolina Telephone Coalition

October 17, 2011

Columbia, South Carolina

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IN RE: Establishment of Interim Local Exchange )  
Fund to Address Revenue Impact on )  
Incumbent Local Exchange Carriers Electing )  
To Reduce Toll Switched Access Rates )  
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**CERTIFICATE  
OF SERVICE**

I, Rebecca W. Martin, do hereby certify that I have this date served one (1) copy of the attached Response to Petition for Reconsideration or Rehearing to the following parties causing said copies to be deposited with the United States Postal Service, first class postage prepaid and properly affixed thereto, and addressed as follows.

L. Hunter Limbaugh, Esquire  
AT&T Communications of the Southern  
States, LLC  
Post Office Box 11889  
Columbia, South Carolina 29201

John T. Tyler, Esquire  
BellSouth Telecommunications, Inc.  
d/b/a AT&T South Carolina  
150 Fayetteville Street Mall, Suite 800  
Raleigh, North Carolina 27601

Robert A. Culpepper, Esquire  
BellSouth Telecommunications, Inc.  
d/b/a AT&T South Carolina  
675 West Peachtree Street, Suite 4337  
Atlanta, Georgia 30375

Patrick W. Turner, Esquire  
BellSouth Telecommunications, LLC  
d/b/a AT&T South Carolina  
1600 Williams Street, Suite 5200  
Columbia, South Carolina 29201

C. Jo Anne Wessinger Hill, Esquire  
Steven W. Hamm, Esquire  
Richardson Plowden and Robinson, P. A.  
Post Office Drawer 7788  
Columbia, South Carolina 29202

Frank R. Ellerbe, III, Esquire  
Robinson, McFadden & Moore, P. C.  
Post Office Box 944  
Columbia, South Carolina 29202-0944

Susan Berlin, Esquire  
Sprint Communications Company  
GAATLD0704  
3065 Akers Mill Road, S. E., 7<sup>th</sup> Floor  
Atlanta, Georgia 30339

Zel Gilbert  
Sprint United Telephone Co. of the  
Carolinas d/b/a Embark  
1122 Lady Street, Suite 1050  
Columbia, South Carolina 29201



Scott Elliott, Esquire  
Elliott & Elliott, P. A.  
1508 Lady Street  
Columbia, South Carolina 29201

John J. Pringle, Jr., Esquire  
John F. Beach, Esquire  
Ellis, Lawhorne & Sims, P. A.  
Post Office Box 2285  
Columbia, South Carolina 29202

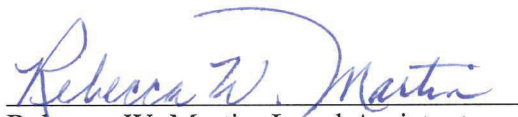
Afton R. Ellison  
Frontier Communications of the Carolinas, Inc.  
Post Office Box 7785  
Columbia, South Carolina 29202

Florence P. Belser, Esquire  
Office of Regulatory Staff  
1401 Main Street, Suite 900  
Columbia, South Carolina 29201

Jeanne W. Stockman, Esquire  
United Telephone Co. of the Carolinas  
d/b/a CenturyLink  
14111 Capital Boulevard  
Wake Forest, North Carolina 27587

B. Craig Collins, Esquire  
John M. F. Hoefer, Esquire  
Willoughby & Hoefer  
Post Office Box 8416  
Columbia, South Carolina 29202-8416

Russell B. Shetterly  
Haynesworth, Marion, McKay &  
Guerard, L. L. P.  
Post Office Drawer 7157  
Columbia, South Carolina 29202

  
Rebecca W. Martin, Legal Assistant  
McNair Law Firm, P.A.  
Post Office Box 11390  
Columbia, South Carolina 29211  
(803) 799-9800

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